

CHAPTER 4-30 DAIRY PRODUCTS REGULATIONS

4-30-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Approved laboratory" means a laboratory in which the entire facilities and equipment have been approved by the department as being adequate to perform the necessary official tests in accordance with the North Dakota laws and the rules of the department.
2. "Cheese factory" means a place where cheese is made for commercial purposes.
3. "Commissioner" means the agriculture commissioner or the commissioner's designee.
4. "Composite sample" means a mixture of single samples of milk or milk products taken from different lots or deliveries, the amount taken each time being in proportion to the amount of milk or milk products delivered. Composite samples are usually taken for determining the butterfat content of a product and are tested at a frequency of not less than once every fifteen days. Preservatives may be added.
5. "Condensery" means a place where condensed or evaporated milk is produced or where milk is changed to a thick liquid by evaporation of a part of the water.
6. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
7. "Dairy or dairy farm" means a place where one or more dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.
8. "Department" means the department of agriculture.
9. "Distributor" means a person or company that provides storage, transportation, delivery, or distribution of milk and milk products to any person who offers for sale or sells to any consumer milk or milk products.
10. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.
11. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat so that the resulting product is in imitation or semblance of any dairy product, including milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk; provided, however, that this term shall not be construed to mean or include:
 - a. Any distinctive proprietary food compound not readily mistaken for a dairy product, where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
 - b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of which has been increased, or both, where the fats or oils other than milkfat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredth per centum of the weight of the finished product, used as a carrier of such vitamins; or
 - c. Oleomargarine.
12. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality of the product.
13. "Ice cream plant" means a place where ice cream is made for commercial purposes.
14. "Ice milk plant" means a place where ice milk is made for commercial purposes.
15. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:

- a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
 - b. The packaging used resembles the packaging used for milk or for a milk product.
 - c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
 - d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.
 - e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
16. "Milk hauler" means a person who owns vehicles used to transport raw milk from a dairy farm to a dairy facility.
 17. "Milk plant or bottling plant" means a place where milk or milk products are collected, handled, processed, stored, and prepared for distribution.
 18. "Milk solids or total solids" means the total amount of solids in milk.
 19. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.
 20. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at such temperature continuously for at least thirty minutes; or heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment. When applied to cream for buttermaking, the cream shall be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may be construed as barring any other process which has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the dairy commissioner.
 21. "Pasteurized Milk Ordinance" means the 2013 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.
 22. "Peddler" means a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand, or other fixed place of business.
 23. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.
 24. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner which changes the natural, physical, or chemical properties of the original product.
 25. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.

26. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.
27. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.
28. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
29. "Retail" means the sale of milk or milk products directly to the consumer.
30. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.
31. "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.
32. "Shared animal ownership agreement" means any contractual arrangement under which an individual:
 - a. Acquires an ownership interest in a milk-producing animal;
 - b. Agrees to pay another for, reimburse another for, or otherwise accept financial responsibility for the care and boarding of the milk-producing animal at the dairy farm; and
 - c. Is entitled to receive a proportionate share of the animal's raw milk production as a condition of the contractual arrangement.
33. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
34. "Standard Methods" means the seventeenth edition of the Standard Methods for the Examination of Dairy Products published by the American public health association.
35. "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.
36. "3A standards" means standards which have been established for certain equipment, utensils, and other items by the 3A sanitary standards committee of the international association of milk and food sanitarians, incorporated.
37. "Transfer station" means a place where milk or milk products are regularly transferred from one vehicle to another. This definition shall not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
38. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

4-30-02. Licenses required - Fees - Term.

Every producer-processor, peddler, distributor, every person purchasing milk or milk products for processing or manufacturing, or owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, milk plant, every other business engaged in the processing or manufacturing of milk or milk products, and every organization acquiring milk or milk products as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business. Application for license must be made to the commissioner upon forms as the commissioner may require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department, the commissioner shall issue a license for conducting those operations listed on the application form. If a licensee wishes to conduct operations other than those listed, the licensee may request that the commissioner approve them, and if the commissioner finds that the proposals are in conformance with North Dakota laws and the rules of the department, the commissioner shall approve them. The license must be posted conspicuously in each licensed business. All licenses issued under this section must expire on the thirtieth day of June of each year and are not transferable. The fee for licenses is twenty-five dollars. Every organization acquiring milk or

milk products as an agent for sale on behalf of others is, for the purposes of this chapter, deemed to be a purchaser of milk from a dairy producer.

4-30-02.1. Records release required with application for licensure.

A purchaser of milk in North Dakota shall file with the license application a release authorizing the commissioner access to the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant or in the course of an investigation of the applicant due to a complaint against the applicant or when based upon evidence establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

4-30-03. Bonding of purchasers of dairy products.

Repealed by S.L. 1979, ch. 106, § 14.

4-30-03.1. Financial condition - Assurance of prompt payment.

Each applicant for a license under section 4-30-02 who purchases milk from a dairy producer shall have first satisfied the department that the applicant's financial condition is such as to reasonably assure prompt payment to the dairy producers for purchased milk.

4-30-03.2. Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited.

Each applicant for a license under section 4-30-02 who purchases milk from a dairy producer shall annually file with the department an audited financial statement prepared by an independent certified public accountant or licensed public accountant in accordance with generally accepted accounting practices and principles, verified by the accountant as accurately representing business operations and financial conditions of the plant business for which the statement is rendered, prepared as of the close of the plant's most recent fiscal year. In lieu of filing an audited financial statement, an applicant may file other forms of security as provided in section 4-30-03.3. All audited financial statements shall be reviewed by the Bank of North Dakota. All statements shall be confidential and shall not be open for public inspection. The department may require additional statements to be audited by a certified public accountant or a licensed public accountant.

4-30-03.3. Surety bond, trustee agreement, other security or assurances.

In all cases where it appears that the financial condition of any applicant or licensee who purchases milk from a dairy producer is not adequate to reasonably assure payment to dairy producers when due for the milk to be purchased, or in lieu of annually filing with the department an audited financial statement as required in section 4-30-03.2, the department shall require from an applicant or licensee security or other assurances in one of the following forms:

1. The filing of a surety bond acceptable to the department. The amount of the surety bond must be determined on the basis of average purchases of milk from dairy producers during the previous year. If payment for milk purchased from dairy producers is made on a weekly basis, the amount of the surety bond must be at least in an amount equal to the average weekly purchases of milk. If payment for milk purchased from dairy producers is made on a semimonthly basis, the amount of the surety bond must be at least in an amount equal to the average semimonthly purchases of milk. If the period of payment for milk purchased from dairy producers is made on a basis involving periods of time greater than semimonthly, the amount of the surety bond must be at least in an amount equal to the average purchases of milk for that greater period of time. The amount of the bond for each period of payment must also include an amount equal to at least the average purchases for three days following the close of the period of payment. The amount of the surety bond of any

licensee who pays assignments to creditors of a producer of milk at a lesser frequency than the licensee pays the producer must also include an amount equal to the value of assignments from the prior payment period. The commissioner must be named as obligee, but the bond or draft must be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to that dairy producer for all milk purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers must in no event exceed the amount of the bond.

2. The providing of an amount of protection for dairy producers, from whom milk is purchased, equal to the amount of protection provided in subsection 1, whereby the security is to be held by the department solely for the protection of dairy producers, in one or more of the following forms:
 - a. Cash deposited with a bank or trust company and held under an escrow agreement with the department.
 - b. Bonds of the United States deposited with the department.
 - c. Stocks, bonds, or other marketable securities at current market values, which securities have regularly reported quotations, deposited with the department.
 - d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of deposit held in favor of the department.
3. The filing of an agreement providing for the complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the dairy producers. The trustee shall make and file a trustee's bond and contracts signed by the owner or operator and the purchaser of the dairy products requiring that payment for all dairy products sold be made to the trustee. The trustee shall maintain a separate bank account for that purpose and shall at least annually render a true and correct account of trustee dealings to the department and to the dairy producers.

4-30-03.4. Financial basis for license - Statement to producer - Notification to department.

All milk purchasers licensed under section 4-30-02 shall inform producers delivering milk of the financial basis on which the license was issued including the type and amount of security, if any, filed under section 4-30-03.3 by a written statement to each producer patron at least once every year. No person may receive milk which will increase the amount due and accrued beyond the amount represented as a basis for the issuance of a license without first notifying the department.

4-30-03.5. Additional security.

Whenever the department determines that the value of milk purchased or received from producers has increased or that an increase may reasonably be anticipated, so that the total amount of security does not comply with the amount required by subsection 1 or 2 of section 4-30-03.3, the department shall require additional security as will afford producers the protection intended by section 4-30-03.3. The department may suspend or revoke any license if the licensee fails to provide the additional security required by the department pursuant to this section.

4-30-03.6. Filing of security before license year.

Surety bonds or other security for the license year must be filed with the department not later than the first day of the month before the beginning of each license year. If any applicant or licensee who purchases or receives milk from dairy producers has not filed a surety bond or other security, and has not been relieved from filing a surety bond or other security, by the first day of the month of the license year, the department shall notify producers selling milk to the applicant or licensee that the applicant or licensee has not filed any security or made other provisions for assuring payments for milk purchases, for the license year.

4-30-03.7. Failure to file security - Notice to producers.

Whenever an applicant or licensee fails to file a surety bond or other security within the time fixed by section 4-30-03.6 or the department's demand for additional security, the department shall publish in a newspaper or newspapers having circulation in the area or areas in which the producers whose milk is sold or delivered to the applicant or licensee reside, a notice stating that the department made demand or request of the applicant or licensee; that the applicant or licensee has failed to comply; that the department does not have on file a surety bond or other security as demanded; and that adequate security to protect producers may not be available to them. In addition to published notice to producers, the department shall send by registered mail a copy of the notice to each producer delivering milk to the applicant or licensee as may be able to be determined from available records and the notice must be addressed to the producer's last-known place of residence.

4-30-03.8. Out-of-state dealers, processors, or producers not exempt.

Sections 4-30-03.1 through 4-30-03.10 apply to all milk purchasers licensed under section 4-30-02 doing business in whole or in part within the state. The protection to producers afforded by sections 4-30-03.1 through 4-30-03.10 is available to the producers of any state selling milk to any licensee licensed under section 4-30-02, but the surety bond or other security required by sections 4-30-03.3 and 4-30-03.5 is payable only for the benefit of producers who are located within this state.

4-30-03.9. Entry, inspection, and investigation.

Authorized representatives of the department may enter, at reasonable hours, places of business where a licensee or license applicant maintains books, papers, accounts, records, or other documents related to the production, storage, processing, manufacturing, or sale of dairy products. The commissioner may subpoena, and the commissioner's authorized representative may inspect, audit, and make copies of relevant books, papers, records, accounts, or other documents of persons doing business with licensees. Any information gained by the department or by the commissioner under this section is confidential and may be used only for the administration of this chapter, but the department or the commissioner may divulge the information when testifying in any departmental administrative hearing, in a duly noticed proceeding before the milk marketing board, or in any court proceeding in which the department or the commissioner is a party. This chapter does not prevent the use of information procured by the department or the commissioner in the compiling or dissemination of general statistical data containing information procured from a number of licensees and compiled in a manner so as not to reveal individual information for any licensee or license applicant.

The commissioner may also subpoena and take the testimony under oath of persons believed by the commissioner to have information needed by the commissioner in administering and enforcing this chapter.

4-30-03.10. Records and reports.

Licensees shall maintain the records the commissioner by rule determines necessary to effectuate the purpose of assuring that a licensee's financial condition is such as to reasonably assure prompt payment to producers.

4-30-04. Department to become trustee upon default in required security.

If any licensee defaults in the provisions of any required security, the licensee is deemed to be insolvent within the meaning of this chapter. The claim for relief for damages upon any required security, and the amount recovered in any action for the conversion of milk, or milk products, as the case may be, purchased by the licensee while the license is in force and effect, and the assets of the licensee not made subject to any claim in federal bankruptcy by any secured or general creditor within four months of the appointment of the department as trustee under this chapter, constitute a trust fund in the hands of the department for all persons having a claim for relief against the licensee on the required security.

4-30-05. Application by department for appointment of trustee - Hearing - Appointment.

Upon the insolvency of a licensee as defined in section 4-30-04, the department shall apply to the district court of the county in which the licensee maintains its principal place of business for the appointment of itself as trustee. Upon such notice to the licensee as the court shall prescribe, but not exceeding ten days, or upon waiver of such notice in writing by the licensee, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court that the licensee is insolvent within the meaning of this chapter and that it would be for the best interest of persons holding claims against the licensee for the purchase price of milk or milk products sold to such licensee or agent that the department shall execute such trust, the court shall issue an order appointing the department as a trustee, without bond, and the department shall proceed in the manner set out in this chapter without further direction from the court.

4-30-06. Notice to file claims - When claims barred.

The department, as trustee, shall notify all persons having claims against the licensee personally by certified mail to file the same with the department. Any such person who fails to file a claim with the department and to surrender to it any receipts obtained from such licensee within thirty days after receiving notice must be barred from participation upon such claim in any fund marshalled by the department as prescribed in this chapter. The department may proceed as prescribed by law when all producers have responded to the notification.

4-30-06.1. Personal notice to file claims - When claims barred.

Repealed by S.L. 1993, ch. 57, § 35.

4-30-07. Remedy of claimants - Separate action by claimant permissible.

No claimant has a separate claim for relief against any licensee's required security unless the department fails or refuses to apply for its own appointment as trustee as provided in this chapter. Any claimant, either independently or in conjunction with other claimants, may pursue concurrently with the department any other remedy which the claimant or claimants may have against the licensee, or against the property of the licensee, for the whole of their claim or claims or for any deficiency which occurs after payments have been made from the trust fund.

4-30-08. Appeal or compromising of action by department.

The department may prosecute an action for any claims arising under the provisions of this chapter in any court, may appeal from any adverse judgment to the courts of last resort, and may settle and compromise any such action whenever in its judgment it will be for the best interests of the claimants. Upon payment to it of the amount of any compromise, or of the full amount of any required security, the department may exonerate the person compromising or paying from further liability growing out of the action.

4-30-09. Moneys collected on claims to be deposited in Bank of North Dakota.

All moneys collected and received by the department as trustee must be deposited in the Bank of North Dakota pending the marshalling of the fund.

4-30-10. Department to file report upon recovery of trust fund - Notice to claimants - Approving or modifying report.

Upon recovery of the trust fund, or so much thereof as it is possible to recover or as is necessary to pay all outstanding claims, the department shall file its report in court showing the amount payable upon each claim, after recognizing any proper liens or pledges thereon or assignments thereof or deductions therefrom, with legal interest thereon. If the fund proves insufficient to redeem all claims in full, the fund must be prorated among the claimants in such manner as the department deems fair and equitable. Thereupon the court shall cite such claimants upon such notice by mail as it prescribes to appear upon a day fixed in the notice and show cause why such report should not be approved and distribution of the fund made as

outlined in the report. Upon such hearing the court shall approve such report or modify the same as justice may require and shall issue an order directing the distribution of the fund and discharging the department from its trust.

4-30-11. Attorney general to represent department and may employ assistants - Department need not pay court costs.

The attorney general shall represent the department in any action or proceeding brought under the provisions of section 4-30-04, and may employ outside legal assistance when necessary, and may deduct the expense in connection therewith from the trust fund. The department is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought by it under the provisions of section 4-30-04 when such fee, cost, or disbursement accrues to the state or to a county of this state.

4-30-12. License needed to sample, haul, or test - Training - Examination - Term - Fee.

No person shall sample, haul, or test milk or milk products for the purpose of determining the value or grade without obtaining a license from the department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the commissioner. The licensee is responsible for the acts of the substitute. An applicant for license shall file an application with the department stating the type of sampling, hauling, or testing the applicant wishes to be licensed for. Before a license is issued, the sampler shall receive training in the sampling of milk or milk products as may be required by the department, and shall pass a written examination prepared and given by the department. The sampler shall show knowledge of the requirements of this chapter which pertain to sampling or testing, and must prove by actual demonstration that the sampler is competent and qualified to perform each type of sampling and testing listed on the application. The commissioner shall then issue a license which shall state the types of sampling, hauling, or testing which the applicant has proven to be able to perform. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee and after receiving any additional training and satisfactorily passing the required examinations. Examinations shall be given by the department at times and places as the department shall determine. A licensee need not take any examinations when renewing a license unless required by the commissioner or the commissioner's assistants. All testers and samplers are required to attend a training session sponsored by the department every two years. Retraining or retesting or both may be required by the commissioner at any time when the commissioner reasonably determines it to be necessary. Licenses issued under this section shall expire on December thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of operation, and are not transferable. Samplers' licenses must be carried by the sampler at all times during sampling activities and are not transferable. The fee for the annual license is ten dollars, and a five dollar penalty fee is applied after the thirty-first day of January if renewals are not paid prior to that date.

4-30-13. Complaint upon violation - Notice of hearing.

Repealed by S.L. 1993, ch. 57, § 35.

4-30-13.1. Commissioner to investigate complaint.

Upon receiving a statement claiming that any provision of this chapter or the rules of the department have been violated, the commissioner shall investigate the complaint as thoroughly and as soon as possible and practicable. If the commissioner finds upon conducting such investigation that a provision of this chapter or the rules of the department have been violated, the commissioner may take any action deemed appropriate.

4-30-13.2. Inspections.

Upon notification, the commissioner shall have free access to all places of business, buildings, vehicles, and equipment used in the production, storage, handling, processing, manufacturing, transporting, and marketing of milk and milk products, and their substitutes. The commissioner may open and inspect any container suspected of containing a substance produced, stored, handled, processed, manufactured, transported, sold, or offered for sale under the provisions of this chapter. It is a violation of this chapter to refuse to allow inspections of any dairy facilities licensed under this chapter. The commissioner may suspend a license for failure to comply with this section.

4-30-14. Hearing - Place.

Repealed by S.L. 1993, ch. 57, § 35.

4-30-15. Suspension or revocation of license - Judicial review - Emergency order.

Any proceedings under this chapter for the suspension or revocation of any license, or to otherwise determine compliance with this chapter, the rules and regulations and orders of the department, must be conducted in accordance with the provisions of chapter 28-32 and appeals may be taken as therein provided. When an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that action be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department an interested person must be afforded a hearing before the department within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.

Any person, firm, corporation, or limited liability company whose license is suspended is not eligible during the period of the suspension to engage in activities allowed by the suspended license either personally, or indirectly by having a financial interest in the business.

4-30-16. Witnesses - Subpoena.

Repealed by S.L. 1993, ch. 57, § 35.

4-30-17. Review by the court.

Repealed by S.L. 1993, ch. 57, § 35.

4-30-18. Sampling and testing procedures - Equipment - Supplies.

The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to those described in the Standard Methods, a copy of which must be kept on file in the department. No equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products which is not in conformance with the requirements of this chapter may be sold or offered for sale. The commissioner through the adoption of rules may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, when appropriate, may check calibration of farm bulk milk tanks and equipment.

4-30-19. Sampling cream - Care of samples.

Repealed by S.L. 2001, ch. 72, § 23.

4-30-20. Sampling of milk.

Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the Standard Methods. Records must be kept which readily identify the sample with those items used to determine payment for the milk. Such items must include weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk.

4-30-21. Standards for the production of cream for manufacturing purposes.

Repealed by S.L. 2001, ch. 72, § 23.

4-30-22. Grades of cream and butterfat based on sediment content and quality.

Repealed by S.L. 2001, ch. 72, § 23.

4-30-23. Sediment testing program for manufacturing cream.

Repealed by S.L. 2001, ch. 72, § 23.

4-30-24. Acceptable, probational, and reject cream.

Repealed by S.L. 2001, ch. 72, § 23.

4-30-25. Cream station requirements.

Repealed by S.L. 2001, ch. 72, § 23.

4-30-26. Purchases of cream - Prices of grades to be kept posted.

Repealed by S.L. 2001, ch. 72, § 23.

4-30-27. Standards for the production of manufacturing grade milk - Commissioner to adopt rules.

The commissioner may adopt rules governing the production and processing of milk for manufactured dairy products. Rules shall, at a minimum, comply with United States department of agriculture minimum standards for manufacturing grade dairy products.

4-30-28. Farm certification.

The commissioner may promulgate rules and regulations concerning farm certification.

4-30-29. Grades of milk for manufacturing purposes.

The commissioner may promulgate rules and regulations concerning grades of milk for manufacturing purposes.

4-30-30. Milk grading program.

The commissioner may promulgate rules and regulations concerning a milk grading program.

4-30-31. Rejection and exclusion of milk.

The commissioner may promulgate rules and regulations concerning rejection and exclusion of milk.

4-30-32. New producers - Transfer producers.

The commissioner may promulgate rules and regulations concerning new producers and transfer producers.

4-30-33. Standards for dairy manufacturing or processing - Commissioner to adopt rules.

The commissioner may adopt rules governing the approval of dairy processing and manufacturing plants and standards for grades of dairy products. Rules must, at a minimum, comply with United States department of agriculture general specifications for approved dairy plants and standards for grades of dairy products. No plant may be operated or any dairy products sold in violation of these rules.

4-30-34. Inspection of dairy plants manufacturing or processing milk products.

The commissioner may promulgate rules and regulations for an inspection program of dairy plants manufacturing or processing milk products.

4-30-35. Standards for manufactured dairy products.

The commissioner may promulgate rules and regulations establishing standards for manufactured dairy products.

4-30-36. Standards for grade A milk and milk products - Adoption of amendments.

Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the Pasteurized Milk Ordinance which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO". The commissioner may adopt as regulations other standards in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

4-30-36.1. Dairy commissioner - City health department - District health units - Cooperation in inspection.

Repealed by S.L. 1979, ch. 105, § 18.

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.

The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - 2013 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines.

The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the Standard Methods and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - 2013 Edition".

4-30-36.4. Grade A pasteurized milk ordinance.

Dairy producers, processors, and manufacturers shall comply with the Pasteurized Milk Ordinance and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2013 Revision".

4-30-37. Quality records to be kept - Term.

Adequate records for testing and grading in conformance with this chapter and the rules of the department must be kept by each business sampling or testing milk for at least twelve months in a manner approved by the commissioner.

4-30-38. Transportation of milk for manufacturing, processing, or bottling purposes - Commissioner to adopt rules.

The commissioner may adopt rules governing the transportation of milk to be used for manufacturing, processing, or bottling purposes. No facility or vehicle may be used or operated in violation of these rules.

4-30-38.1. Milk haulers - License required - Commissioner to adopt rules.

No person shall own or operate any tank truck, bulk milk truck, or other vehicle used or designed to carry bulk raw milk without a license issued by the department. The commissioner shall promulgate rules governing the operation, inspection, design, and licensure of such persons. The license of any person operating a vehicle in violation of this section or the rules of

the department is subject to revocation or suspension in accordance with procedure established by law. A license to haul milk issued under this section may be issued in conjunction with or as part of any license to sample or test milk or milk products issued pursuant to section 4-30-12.

4-30-39. Transportation, labeling, and distribution of processed and manufactured products - Rulemaking - Violations.

The commissioner may adopt rules governing the labeling, distribution, and transportation of processed and manufactured milk or milk products.

4-30-40. Adulterated, impure, or unwholesome milk or milk products not to be transported, stored, sold, or offered for sale.

Any milk or milk products produced or kept under unclean or unsanitary conditions or produced from animals which are diseased or fed unwholesome, impure, or toxic feed, or milk which tastes from colostrum, shall be deemed impure and unwholesome. No milk or milk product which is deemed to be adulterated, impure, or unwholesome may be transported, stored, sold, or offered for sale in this state.

4-30-41. Sale of milk or milk products in violation of this chapter prohibited.

No person may sell, or offer for sale, any milk or milk product, their imitations or substitutes, which is produced, processed, manufactured, transported, or stored, in violation of the laws of this state or the rules and regulations of the dairy department, or which do not subscribe to its definition as stated in this chapter or hereafter defined by the dairy commissioner.

4-30-41.1. Prohibition against sales of imitation milk or imitation milk products and filled dairy products.

Repealed by S.L. 1993, ch. 57, § 37.

4-30-41.2. Exception for uses as directed by physicians.

This chapter does not prohibit the manufacture or sale of filled dairy products or imitation milk and imitation milk products when such foods are clearly labeled to show their composition and the fact that they are sold customarily for use as directed by order of a physician and are prepared and designed for medicinal or special dietary use and prominently so labeled.

4-30-41.3. Sale of foods not imitation milk, imitation milk products, or filled dairy products.

This chapter does not prohibit the manufacture or sale of proprietary foods which are clearly not imitation milk, imitation milk products, or filled dairy products, which do not contain imitation milk, imitation milk product, or filled dairy product, and which are not conducive to substitution, confusion, deception, and fraud upon the purchasers of milk, milk products, or filled dairy products by their manufacture or sale.

4-30-41.4. Shared animal ownership agreement - Raw milk.

It is not a violation of this chapter to transfer or obtain raw milk under a shared animal ownership agreement. However, a person may not resell raw milk or raw milk products obtained under a shared animal ownership agreement.

4-30-42. Overrun limited.

Repealed by S.L. 2001, ch. 72, § 23.

4-30-43. Filled dairy products - Declaration of policy.

Repealed by S.L. 1985, ch. 100, § 7.

4-30-44. Branding cans, kegs, barrels, and receptacles - Filing brand - Contents.

Repealed by S.L. 1991, ch. 70, § 21.

4-30-45. Labeling of milk and milk products for sale at retail.

Repealed by S.L. 1993, ch. 57, § 37.

4-30-45.1. Labeling and identity standards.

All persons who sell at retail in this state milk or milk products must comply with the labeling standards and standards of identity set forth in 21 U.S.C. 343(q)(r) and in rules adopted by the commissioner.

4-30-46. Reports - Blanks - When made - Contents.

The dairy commissioner shall furnish blanks to all licensed creameries, cheese factories, condenseries, drying plants, ice cream plants, ice milk plants, milk plants, and producer-distributors for the purpose of making a report of the amount of milk and milk products handled. Each proprietor or manager of such businesses shall report to the commissioner on the last day of June and of December of each year, or within thirty days thereafter, or immediately upon cessation of operation, the pounds [kilograms] of butterfat in cream, the pounds [kilograms] of manufacturing grade milk, and the pounds [kilograms] of bottling milk purchased during the period covered by the report, the aggregate amount paid for each, the number of pounds [kilograms] of butter and cheese, and the number of gallons [liters] of ice cream and ice milk manufactured during such period.

4-30-47. Dispute over test - Official test made - By whom - Other tests - Fees.

If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk sold or offered for sale at the request of the owner and in the owner's presence, a sample of such milk obtained as provided in section 4-30-20 and mutually agreed upon by the interested parties as being a representative sample must be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There must accompany each sample a statement giving the name and address of the seller and the buyer of the milk in question, the net weight thereof, the percentage and amount of butterfat contained therein, the price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner or the commissioner's agent shall determine the percentage of butterfat contained in the sample and shall make a report of the result in triplicate, the original to be filed in the commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk. The percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the making of the official butterfat test and any other tests required must be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee must be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

4-30-48. Failure to agree on sample for official test - Procedure to be followed.

Whenever it is impossible to secure or mutually agree upon a sample of milk as provided in section 4-30-47, then the party selling or offering for sale such milk may require that the buyer or prospective buyer forward to the department the sample taken in compliance with section 4-30-20. Each sample so forwarded must be accompanied by a statement in the form of an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of section 4-30-20, and the statement also must contain all information required in section 4-30-47, except that the signature of the seller is not required thereon. Each sample must be tested and reported on as prescribed in section 4-30-47, and the percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

4-30-49. Standards considered minimum - Municipality may provide more stringent standards.

The standards set forth in this chapter must be considered as minimum standards only. Nothing in this chapter may be construed to prevent any municipality from providing by ordinance more stringent or comprehensive standards than are contained herein nor is anything in this chapter or in the rules and regulations of the department to be construed to prevent any person concerned with dairying from using standards, inspections, or other practices or procedures which are more stringent or comprehensive.

4-30-50. Fees and penalties collected to be placed in general fund.

All fees and penalties, collected under this chapter, must be deposited with the state treasurer and credited to the general fund.

4-30-51. Commissioner to investigate complaint.

Repealed by S.L. 1993, ch. 57, § 35.

4-30-52. Disposal of illegal milk or milk products - Seizure.

Any milk or cream offered for sale and which is in violation of any provisions of this chapter or the rules and regulations of the department must be colored with a harmless food coloring and returned to the owner. In addition, any milk or milk product which is in violation of this chapter or the rules of the department may be seized or ordered held by the commissioner and must be disposed of as any other illegal food or drug as outlined in chapter 19-02.1.

4-30-53. Penalty for violation of chapter - Additional civil penalty - Failure to pay civil penalty.

Any person violating any of the provisions of this chapter, the rules of the department, or any order of the commissioner, for which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In addition, a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation may be imposed. The civil penalty may be imposed by the courts in a civil proceeding or by the commissioner through an administrative hearing pursuant to chapter 28-32. If a civil penalty is imposed by the commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. The commissioner may suspend or revoke a license issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed. The commissioner may refuse to renew or issue a license if the licensee or license applicant has repeatedly violated the provisions of this chapter, the department rules, or orders of the commissioner.

4-30-54. State's attorney's endorsement to complaint unnecessary upon violation of chapter.

It shall be unnecessary to have the endorsement of the state's attorney to a complaint made for a violation of the provisions of this chapter, but when the court before whom a complaint is made is satisfied of the truthfulness of such complaint, it shall issue a warrant thereon.

4-30-55. Sale of raw milk for direct consumer consumption.

Repealed by S.L. 1985, ch. 100, § 7.

4-30-55.1. Rules for enforcement of chapter.

The department is authorized to adopt rules, in accordance with chapter 28-32, consistent with and necessary for the enforcement of this chapter.

4-30-55.2. Commissioner - Rulemaking authority - Limitation.

Notwithstanding chapter 28-32, the commissioner may not adopt any rule that restricts, limits, or imposes additional requirements on any individual transferring or obtaining raw milk in accordance with the terms of a shared animal ownership agreement.

4-30-56. Enforcement.

The commissioner is authorized and directed to administer and supervise the enforcement of this chapter; to provide for periodic inspections and investigations the commissioner deems necessary to disclose violations of any acts prohibited by this chapter or the rules of the department; to receive and provide for the investigation of complaints; and to provide for the institution and prosecution of civil or criminal actions or both, upon the commissioner's own initiative. The provisions of this chapter and the rules of the department may be enforced by injunction in any court having jurisdiction to grant injunctive relief, and filled dairy products, imitation milk, or imitation milk products, illegally held or otherwise involved in violation of this chapter are subject to seizure and disposition in accordance with an appropriate court order.